Supreme Court, U.S.
FILED
MAR 10 1995
OFFICE OF THE CLERK

No. 94-1356

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ROBERT GABLE, HARVEY SPIES, JOHN FOLEY, and EUGENE FOREMAN, on behalf of themselves and as representatives of a class of persons similarly situated,

Petitioners,

v.

SWEETHEART CUP COMPANY, INC., SWEETHEART HOLDINGS INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Court of Appeals correctly find that Maryland Cup's welfare benefits plan unambiguously reserved the right to amend, modify or terminate the benefits granted retirees and that Petitioners therefore failed to meet their burden of proving that such benefits were otherwise vested under the Employee Retirement Income Security Act?

PARTIES TO THE PROCEEDING

The Respondents adopt the Petitioners' statement regarding the parties to this proceeding. Because the parties agree that there is no significant difference between the status of the varying respondents here, Pet. at 5 n.1, the Respondents will be referred to collectively herein as Maryland Cup Corporation ("Maryland Cup"), although technically, Maryland Cup is not a party to this case.

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BRIEF IN OPPOSITION

The petition for certiorari casts the Fourth Circuit as a Court in conflict with "every other circuit" but the Fifth. Pet. at 17. Based on its portrayal of colliding precedents and legal uncertainty in ERISA law, the petition asks this

Court to unravel the "hopeless conflict among the Circuits." Pet. at 16. Yet, the petition masks the straightforward law at issue and the rather ordinary posture of this case. Accordingly, the petition for a writ of certiorari should be denied in this case because:

1. The Fourth Circuit Court of Appeals' decision does not conflict with any decision of this Court or with any other Court of Appeals; and

2. This case does not present special or important reasons for granting certiorari.

STATEMENT OF THE CASE

For brevity, the Respondents respectfully refer the Court to the factual statement presented by the Fourth Circuit in its opinion. Pet. at 3a-6a.

The Petitioners' Statement avoids the decisive facts and legal conclusions at the heart of the judgments below. Indeed, it ignores the fact that Maryland Cup explicitly reserved the right to amend its employee welfare benefits plan *ab initio*. Thus, notwithstanding the Petitioners' Statement, the relevant and essential facts in this case are:

1. Maryland Cup offered comprehensive health benefits to its employees and retirees beginning in the 1950s. Maryland Cup provided those benefits pursuant to a group insurance policy which reserved in plain and unambiguous terms the right to amend or discontinue benefits at any time:

> This Policy may be *amended or discontinued at any time* by written agreement between the Company and the holder thereof without the consent of or notice to any employee or beneficiary or any other person having a beneficial interest in said Policy. . . .

The Policy's reservation of rights applied unequivocally to employees and retirees alike.

2. All new employees received a "Certificate of Insurance" reiterating the fact that the Plan could "at any time be amended or discontinued. . . ." Indeed, Maryland Cup amended the Plan "many times." Pet. at 4a. With each amendment, Maryland Cup provided beneficiaries with amendment inserts to place in their benefit packets.

3. After Congress enacted the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, *et seq.* Maryland Cup filed its Policy with the United States Department of Labor and established its employee welfare benefits plan (the "Plan"). As noted, the Plan plainly reserved the settlor's right to modify the Plan "at any time."[1]

4. Over the years, Maryland Cup issued each retiring employee an informal document known as a "Schedule II" which briefly described benefits available at that time. A Schedule II's benefit descriptions varied for each employee, and although many Schedule IIs referred to "lifetime" benefits, none guaranteed *vested* benefits. Maryland Cup did not file any Schedule II documents with the Department of Labor.

5. Maryland Cup decided to self-insure the Plan in 1985 and informed its employees accordingly. The self-funded Plan continued to reserve expressly Maryland Cup's right to amend, modify or terminate the Plan altogether.

6. Maryland Cup filed and distributed to all employees and retirees a Summary Plan Description ("SPD") in

[1] Ironically, some of the Plan's settlors who specifically reserved that amendment right are among the Petitioners here disavowing that explicit reservation.

1986, reiterating its reserved right to modify, change or even terminate medical coverage. Not a single Petitioner challenged that reserved right at that time.

7. Escalating health care costs forced Maryland Cup to amend its Plan in 1989 to require retirees to pay a larger share of their health benefits.

The Petitioners filed suit, alleging that Maryland Cup's 1989 benefits reductions violated ERISA. Three layers of the federal judiciary examined Maryland Cup's Plan and found no ERISA violation. Specifically, the United States Magistrate Judge, the District Court, and the Court of Appeals for the Fourth Circuit each determined that (1) there existed no written agreement vesting retirement health benefits, (2) Maryland Cup's Plan unambiguously reserved the right to amend Plan benefits, thus barring extrinsic evidence, and (3) the 1986 SPDs satisfied ERISA's notification requirements.[2]

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[2]The Petitioners argued to the district court that not all class members may have received the 1986 SPD. Accordingly, the Court gave each individual class member the right to come forward with evidence that he or she relied on or was prejudiced by the alleged failure of notice. Pet. at 21a-22a; *see Aiken v. Policy Mgt. Sys. Corp.*, 13 F.3d 138, 141 (4th Cir. 1993) (holding that ERISA claimant alleging defective notice of a plan amendment must show "some significant reliance upon, or possible prejudice flowing from, the faulty plan description."), *Govoni v. Bricklayers, Masons, & Plasterers Int'l Union Local No. 5 Pension Fund*, 732 F.2d 250, 252 (1st Cir. 1984) (same). Despite having 30 days to do so, not a single individual class member came forward with such evidence.

REASONS FOR DENYING THE PETITION

The Petitioners ask this Court to rewrite ERISA and federal common law by expunging an employee welfare benefits plan's plain language and relying instead on extrinsic evidence of the settlor's alleged intent to provide vested lifetime health benefits. Because the law regarding the interpretation of *unambiguous* ERISA plans is firmly cast, the grant of certiorari is unnecessary.

I.

THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR OF ANY OTHER COURT OF APPEALS.

The Petitioners implore this Court to resolve a "hopeless conflict" in federal circuit law. Pet. at 16. That "conflict" is purportedly based on the Fourth Circuit's refusal to admit extrinsic evidence to refute the terms of the Plan at issue. Yet there is no conflict. A simple but decisive distinction exists between the case law cited by the Petitioners and the case at hand. Indeed, in nearly every case cited by the Petitioners, *ambiguity* in the operative contract unlocked the evidentiary gates to extrinsic evidence of the settlor's intent. Absent such ambiguity, those gates remain closed.

Here, Maryland Cup's ERISA Plan plainly reserved the right to amend, modify or even terminate benefits. No ambiguity exists. The Fourth Circuit merely looked to and applied the Plan's plain language, foreclosing any need for extrinsic evidence. The Court did not, however, *abolish* the use of extrinsic evidence in all cases. It simply found extrinsic evidence inadmissible to contradict an ERISA plan's clear terms. The Fourth Circuit, therefore, adhered strictly to ERISA's plain language and the uniform law of its sister circuits.

A. Congress Intended Employers To Be Free To Amend Employee Welfare Benefit Plans When Necessary.

Employee welfare benefits do not vest by law. *Massachusetts v. Morash,* 490 U.S. 107, 119 (1989) ("ERISA's vesting and funding requirements do not apply to welfare benefit plans."). Instead, "Congress intended employers to be free to create, modify, or terminate the terms and conditions of employee welfare benefit plans as inflation, changes in medical practice and technology, and the costs of treatment dictate." *Owens v. Storehouse, Inc.,* 984 F.2d 394, 398 (11th Cir. 1993); *accord Allen v. Adage, Inc.,* 967 F.2d 695, 698 (1st Cir. 1992) (noting Congress's "considered decision that welfare benefit plans not be subject to a vesting requirement"); *Moore v. Metropolitan Life Ins. Co.,* 856 F.2d 488, 492 (2d Cir. 1988) (discussing Congress's recognition of the need for flexibility in the apportionment of welfare benefits); *Musto v. American Gen. Corp.,* 861 F.2d 897, 901 n.2 (6th Cir. 1988) (same), *cert. denied,* 490 U.S. 1020 (1989).

Because employee welfare benefits do not vest by law, courts have routinely held that "[a]n employer may change such benefits without violating ERISA." *Sutton v. Weirton Steel Div. of Nat'l Steel Corp.,* 724 F.2d 406, 410 (4th Cir. 1983), *cert. denied,* 467 U.S. 1205 (1984); *accord Adams v. Avondale Indus., Inc.,* 905 F.2d 943, 947 (6th Cir.), *cert. denied,* 498 U.S. 984 (1990); *Young v. Standard Oil (Indiana),* 849 F.2d 1039, 1045 (7th Cir.), *cert. denied,* 488 U.S. 981 (1988); *see also Reichelt v. Emhart Corp.,* 921 F.2d 425, 430 (2d Cir. 1990), *cert. denied,* 501 U.S. 1231 (1991) (holding that because severance benefits are welfare benefits, "under ERISA, the

employer has the *right* at any time to amend or terminate a severance pay plan.") (emphasis added).

Employers may, however, agree to provide vested lifetime benefits. Because such agreements exceed ERISA's requirements, they must be written explicitly into a plan. *See, e.g., Owens,* 984 F.2d at 398 ("[a]bsent *contractual obligation,* employers may decrease or increase benefits.") (emphasis added); *Vasseur v. Halliburton Co.,* 950 F.2d 1002, 1006 (5th Cir. 1992) (same); *Howe v. Varity Corp.,* 896 F.2d 1107, 1109 (8th Cir. 1990) ("[w]elfare benefit plans may be modified or terminated absent the employer's *contractual agreement* to the contrary.") (emphasis added); *Alday v. Container Corp. of Am.,* 906 F.2d 660, 665 (11th Cir. 1990), *cert. denied,* 498 U.S. 1026 (1991) ("any retiree's right to lifetime medical benefits at a particular cost can *only* be found if it is established by the *contract* under the terms of the ERISA-governed benefit plan document") (emphasis added); *Molnar v. Wibbelt,* 789 F.2d 244, 250 (3d Cir. 1986) (no vesting occurred because "no contractual provision" imposed such vesting); *In re White Farm Equip. Co.,* 788 F.2d 1186, 1193 (6th Cir. 1986) (noting that vesting may occur if "set out in plan documents"); *Turner v. Local 302, Int'l Bhd. of Teamsters,* 604 F.2d 1219, 1225 n.8 (9th Cir. 1979) (welfare benefits did not vest where neither the plan nor SPD indicated "that health and welfare benefits would be paid for the rest of [the participant's] life").

Thus, employers may freely modify their employee welfare benefit plans unless they promise in writing not to do so; such extra-ERISA commitments may not be lightly inferred. The burden of proving the intent to vest benefits rests squarely on the Petitioners. *Howe,* 896 F.2d at 1109.

The Fourth Circuit's opinion comports fully with Congressional intent that employers be free to apportion welfare benefits based on economic imperatives. Like its sister circuits, the Court declined to impose extra-ERISA commitments absent express evidence in Plan documents of employer intent to do so.

B. Because Maryland Cup Unambiguously Reserved The Right To Amend Its Plan, Extrinsic Evidence Is Inadmissible Here.

The Petitioners argue, however, that the Court's opinion subverts common law contract principles by barring extrinsic evidence to clarify employer intent to confer vested benefits. Indeed, they state that under the Fourth Circuit's analysis "if the contract is ambiguous, then that is the end of the case . . . ." Pet. at 17. The Petitioners are mistaken. The Court made clear that had the Plan been ambiguous, extrinsic evidence would have been appropriate to determine the settlor's intent:

> In light of the fact that the master policy unambiguously reserved the company's right to modify or terminate the plan, we have no need to consider plaintiffs' extrinsic evidence in determining the company's rights and obligations under that plan.

Pet. at 10a. Thus, the Court noted the need for extrinsic evidence to clarify material ambiguity; yet the Plan's clarity foreclosed that possibility. Rather than subverting common law contract principles, the Court applied them strictly.

Significantly, the Petitioners do not challenge the lower courts' view of the Plan's clarity, and for good reason. Other courts analyzing the same or similar modification clauses found those clauses unambiguous, thus barring extrinsic evidence. In *Alday,* the Eleventh Circuit

refused to consider extrinsic evidence of an employer's alleged intent to vest benefits when plan documents reserved the right to "terminate, suspend, withdraw, amend or modify the Plan in whole or in part at any time." 906 F.2d at 662. The Second Circuit in *Moore* similarly refused to permit extrinsic evidence to alter the employer's unambiguous reservation of "the right to change or discontinue any portion of the benefits" conferred under its plan. 856 F.2d at 490. The Sixth Circuit in *Musto,* moreover, examined a reservation clause that promised: "This Policy, or any insurance coverage hereunder, may be amended or discontinued at any time by an announcement duly published by the Company." 861 F.2d at 901. Applying its plain terms, the Sixth Circuit found that reservation clause unambiguous, declaring: "As far as the plan itself is concerned, it is perfectly clear that no immutable insurance benefits can be said to vest upon retirement." *Id.* at 907. The Court refused, therefore, to consider extrinsic evidence.

The clarity of Maryland Cup's Plan similarly bars extrinsic evidence here because such evidence is simply inadmissible to expand the terms of an unambiguous contract. *See American Propeller & Mfg. Co. v. United States,* 300 U.S. 475, 479 (1937). That maxim is particularly compelling in the ERISA field where courts apply it rigidly. *See, e.g., Haubold v. Intermedics, Inc.,* 11 F.3d 1333, 1338-39 (5th Cir. 1994); *Rodriguez-Abreu v. Chase Manhattan Bank, N.A.,* 986 F.2d 580, 586 (1st Cir. 1993); *Boyer v. Douglas Components Corp.,* 986 F.2d 999, 1005 (6th Cir. 1993); *Stewart v. KHD Deutz of Am., Corp.,* 980 F.2d 698, 702 (11th Cir. 1993); *Alexander v. Primerica Holdings, Inc.,* 967 F.2d 90, 95 n.1 (3d Cir. 1992); *Glocker v. W.R. Grace & Co.,* 974 F.2d 540, 544 (4th Cir. 1992); *Awbrey v. Pennzoil Co.,* 961 F.2d 928,

930 (10th Cir. 1992); *Howe,* 896 F.2d at 1110; *Operating Eng'rs Pension Trusts v. B & E Backhoe, Inc.,* 911 F.2d 1347, 1352 (9th Cir. 1990).

Moreover, this Court in *Firestone Tire & Rubber Co. v. Bruch,* 489 U.S. 101, 112 (1989), suggested that courts apply trust law principles in construing ERISA terms. Under such principles, interpretation of unambiguous terms also is limited to consideration of their plain meaning. *See* Restatement (Second) Trusts §164 Comment e (1959). The Fourth Circuit properly barred extrinsic evidence and the Petitioners' argument that the Court subverted contract principles is simply incorrect.

C. *Yard-Man* Is Inapposite.

The Petitioners base their claim of knotted circuit law on their reading of *International Union, United Auto., Aero., & Agric. Implement Workers of Am. v. Yard-Man, Inc.,* 716 F.2d 1476 (6th Cir. 1983). In *Yard-Man,* the Sixth Circuit held that where a collective bargaining agreement is ambiguous as to the duration of retiree benefits, courts should infer that retiree benefits were intended to vest for life. *Id.* at 1482. The Petitioners' reliance on *Yard-Man* is misplaced.

First, *Yard-Man* – and its cited progeny – arises in the singular context of negotiated benefits conferred by collective bargaining agreements. Second, and more critically, patent ambiguity plagued the *Yard-Man* agreement's "key provision," thus unlocking the gate to extrinsic evidence of the parties' intent. *Id.* at 1480. That ambiguity triggered the judicially-crafted "inference" of intent. Absent such ambiguity, however, no "inference" can arise. *See Stewart,* 980 F.2d at 702 n.3 (declaring that *Yard-Man* inference used only to

resolve ambiguity). Last, the Sixth Circuit in *Yard-Man* noted that an "inference" of vesting is alone "insufficient to find an intent to create interminable benefits." *Id.* at 1482. The Court recognized that "traditional rules of contractual interpretation require a *clear manifestation of intent* before conferring a benefit or obligation." *Id.* at 1481 n.2 (emphasis added). That, of course, is precisely the standard applied by the Fourth Circuit below in requiring that the employer's intent to confer vested benefits be stated in "clear and express language." Pet. at 8a. Yet, the Petitioners do not – and indeed can not – identify any Plan language embodying Maryland Cup's "clear manifestation" of its intent to confer vested lifetime benefits. None exists. Accordingly, *Yard-Man* – and its cited progeny – is unavailing here.

Moreover, stripped of a collective bargaining context, *Yard-Man*'s vitality is doubtful. In *Musto*, decided five years after *Yard-Man*, the Sixth Circuit confronted a situation nearly identical to the one at hand. After canvassing the many documents at issue in that case, the Court declared:

> As we have seen, the [ERISA] document is unambiguous; instead of providing that the company may never require a premium contribution for medical coverage after retirement, the plan document provides just the opposite. As far as the plan itself is concerned, it is perfectly clear that no immutable insurance benefits can be said to vest upon retirement.

861 F.2d at 907. Facing an unambiguous ERISA plan free from a collective bargaining context, the Sixth Circuit dispatched easily the very claims advanced by the Petitioners here. *See also Boyer*, 986 F.2d at 1005 (excluding extrinsic evidence where plan contained no

evidence of employer intent to provide vested health benefits). Thus, the "hopeless conflict" avowed by the Petitioners is really no conflict at all.

D. Informal Writings Can Not Alter A Plan's Plain Terms.

Ignoring the Plan's plain language and the deeply-rooted law forbidding extrinsic evidence absent ambiguity, the Petitioners nonetheless assail the lower courts' refusal to admit extrinsic evidence in this case. The Petitioners argue that "there is no good reason why [an employer] should not be bound by its official standard forms and benefit brochures in determining future liabilities." Pet. at 22. Of course there are reasons, and very good ones.

First, as stated, extrinsic evidence is simply irrelevant to determine intent absent ambiguity. Second, the documents to which the Petitioners ostensibly refer – the Schedule IIs – are informal benefit descriptions and not official Plan documents. Maryland Cup distributed a Schedule II to each employee who expressed a desire to retire; every Schedule II differed because the benefits available to each retiring employee differed. Thus, while many Schedule IIs referred to "lifetime" benefits, that description merely reflected the benefits *then-available* to a specific employee. The Schedule IIs did not promise vested health benefits for life. Based on those factors, the Magistrate Judge, the District Court and the Fourth Circuit each found the Schedule II documents "extrinsic" to the Plan.[3]

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[3] While the Schedule IIs are not part of the Plan, neither are they SPDs. They fail to satisfy ERISA's requirement that official plan descriptions describe, among other things, "the plan's require-

[footnote continued]

Such informal writings can not modify an unambiguous ERISA plan. *Nachwalter v. Christie*, 805 F.2d 956, 960 (11th Cir. 1986); *accord Moore*, 856 F.2d at 492. Nor may the Schedule IIs be used to *establish* ambiguity; any ambiguity must be created by the Plan itself. *Stewart*, 980 F.2d at 702.

E. Maryland Cup Properly Notified All Plan Members Of Its Right To Amend The Plan.

The Petitioners argue further that Maryland Cup's 1986 SPD failed properly to notify Maryland Cup's retirees of the Plan's amendability. The Petitioners are incorrect. First, they ignore the fact that Maryland Cup furnished each employee with a Certificate of Insurance plainly stating that the Plan could "at any time be amended or discontinued. . . ." Second, Maryland Cup distributed the 1986 SPDs nearly three years *before* economic conditions forced an amendment. *See Pierce v. Security Trust Life Ins. Co.*, 979 F.2d 23, 28 (4th Cir. 1992) (holding that ERISA's notice requirement fulfilled if proper notice given before plan modification or termination occurs). Not a single Plan member challenged the 1986 SPD before Maryland Cup acted on its reserved right to amend the Plan.

Importantly, because some class members claimed not to have received the 1986 SPD, the district court granted each individual class member the opportunity to present

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ments respecting eligibility for participation and benefits; . . . and the source of financing of the plan and the identity of any organization through which benefits are provided." 29 U.S.C. §1022(b). The Schedule IIs at issue here do not contain that information. Further, unlike the Policy, the settlors never filed any Schedule IIs with the Department of Labor. Therefore, the lower courts properly found the Schedule IIs not to be official Plan documents.

evidence of reliance on, or prejudice flowing from, that alleged failure of notice. Yet not a single Petitioner stepped forward. That silence speaks for itself.

Moreover, the Petitioners' reliance on *Jensen v. SIPCO,* 38 F.3d 945 (8th Cir. 1994) is misplaced. In *SIPCO,* the Eighth Circuit confronted an *ambiguous* Plan and SPDs. The Court properly admitted extrinsic evidence to determine the settlor's intent to provide vested health benefits. The employees submitted a "wealth" of extrinsic evidence; the employer, however, "presented virtually no extrinsic evidence at trial supporting its position." *Id.* at 950. Thus, based on the plan's ambiguity and extrinsic evidence of the settlor's intent, the Court determined that the employer intended to vest employee health benefits. *SIPCO* is, of course, different from the case at issue, and indeed fortifies Maryland Cup's position that extrinsic evidence is properly admitted to clarify ambiguity *only.*

II.

THIS CASE DOES NOT PRESENT SPECIAL OR IMPORTANT REASONS FOR THE GRANTING OF CERTIORARI.

There are no special or important reasons for granting certiorari here. *See* Rule 10.1. The Petitioners' assertions have been rejected at every turn. The Plan language at issue is direct, straightforward and unambiguous. That language reserved the right to amend the employee welfare plan "at any time." The 1986 SPD notified the Petitioners of that reserved right. The straightforward application of an unambiguous reservation of rights clause in an ERISA plan does not give rise to the "special and important" circumstances justifying the grant of a writ of certiorari.

The Petitioners seek to cast the Fourth Circuit as a Court irretrievably adrift from the judicial mainstream. It is not. The Fourth Circuit's opinion below adheres carefully to deeply rooted principles of trust and contract law. Accordingly, granting certiorari here would undermine those principles and needlessly disrupt the circuit courts' orderly and uniform adjudication of ERISA claims.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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